

APPENDIX A

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.



Firm Overview

Kellogg Hansen is a preeminent trial and appellate litigation firm founded on the idea that talent, creativity, and hard work achieve the best results for clients. Formed in the spring of 1993 by law school classmates (Harvard '82) Michael Kellogg, Peter Huber, and Mark Hansen, our firm has grown over the past 25 years – with each year proving that our founding principle holds true. Today, Kellogg Hansen has more than 90 attorneys, including 33 partners, and boasts an extensive record of success for our clients.

Our highly credentialed and motivated attorneys offer businesses, individuals, and governments sound counsel and innovative solutions to complex disputes and high-stakes matters. We have substantial experience trying cases to verdict at trial, arguing matters before the United States Supreme Court and other appellate courts, and representing businesses and individuals in parallel proceedings before state and federal courts, agencies, and arbitration panels. We represent both plaintiffs and defendants, providing our clients with a balanced view of both sides of litigation.

We are most proud of the exceptional results we achieve for our clients. Kellogg Hansen has won multiple verdicts in excess of \$1 billion, obtained settlements in the hundreds of millions of dollars for numerous clients, and successfully defended clients against similarly large damages claims. Our experience, talent, and hard work ensure that our clients receive highest-quality representation and extraordinary service.

Our Attorneys

Kellogg Hansen attorneys are known as trial-ready litigators, who are not afraid of complexity and have the experience to successfully try high-stakes and high-profile litigation. *Chambers USA*, reports that our firm is a “highly effective litigation boutique, known for its expertise in contentious civil matters, including bet-the-company cases in antitrust” and that our attorneys provide “highly sophisticated representation to a broad range of corporate clients, with trial and appellate experience that extends across multiple jurisdictions and all the way up to the Supreme Court.”

Kellogg Hansen attorneys have the track record and results to back up the accolades:

- Our partners have been lead counsel in more than 100 federal and state trials and appeals and have argued 71 cases before the Supreme Court of the United States.
- We won the two largest antitrust judgments in United States history (*Conwood v. U.S. Tobacco* and *In re Urethane Antitrust Litigation*), both in excess of \$1 billion, and successfully defended them on appeal.

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- Our attorneys won a defense verdict and obtained a unanimous affirmance on appeal in a fraudulent conveyance bench trial in which the plaintiff sought more than \$9 billion in damages.
- We have secured recoveries in excess of \$5.1 billion for defective mortgage-backed securities against a wide range of Wall Street banks on behalf of the National Credit Union Administration.
- We have argued and won precedent-setting Supreme Court cases in areas such as civil procedure (*Bell Atlantic Corp. v. Twombly*), antitrust (*Pacific Bell Tel. Co. v. Linkline Communications, Inc.*), securities regulation (*Amgen Inc. v. Connecticut Retirement Plans & Trust Funds* and *Matrixx Initiatives, Inc. v. Siracusano*), and federal preemption (*Wyeth v. Levine* and *Altria Group, Inc. v. Good*).

Courts across the country have recognized the work of Kellogg Hansen's committed attorneys. In the *Urethane* MDL, Judge Lungstrum stated that the Kellogg Hansen trial team "achieved an incredible result for the class, . . . and . . . won what is reported to be one of the largest verdicts of its kind in United States history. Counsel had to build this case on their own, without the help of a governmental investigation." Judge Lungstrum said that in his "almost 25 years of service on the bench, this Court has not experienced a more remarkable result." In *Dial Corp. v. News Corp.*, Judge Pauley called the efforts of Kellogg Hansen as co-lead counsel, together with four other law firms, "a paradigm for smooth and efficient claims administration" and wishing "all class action settlements could end on such a high note."

Kellogg Hansen hires only the most talented and motivated attorneys to join us in our fast-paced and challenging practice. Nearly all Kellogg Hansen partners and associates graduated from top-tier law schools and served as law clerks for federal appellate judges, and many Kellogg Hansen partners have held high-level positions in both the federal government and the private sector.

The bench of credentialed and qualified attorneys at Kellogg Hansen is deep. The firm was founded with the conviction that able young attorneys can assume substantial responsibility at an early point in their careers for matters at both the trial and the appellate levels. We believe that this benefits both our clients, who receive cost-effective service from highly motivated attorneys, and the attorneys, who experience the satisfaction of practice. We also encourage our attorneys to consider public service, and have seen many become judges, advance to senior positions in government, and serve as deans and professors at the nation's top law schools. Kellogg Hansen was proud and delighted at the confirmation of former colleague Neil Gorsuch as a United States Supreme Court Justice in 2017.

Our Practice

Our practice builds on the experience of the firm's partners as attorneys in federal agencies, the White House, and the general counsel's office of a Fortune 100 corporation. We pride ourselves as generalists with subject matter experience that is both broad and deep in areas including complex corporate disputes, antitrust, class actions, securities fraud, fiduciary duty, professional liability, government investigations, Supreme Court and appellate litigation, telecommunications, intellectual property, and patents.

Our wide-range of experience allows us to regularly take on cases that do not fit neatly into a single category and enables us to bring skills and tactics learned in one practice to another. The matters we handle for our clients range from a complex 500-party interpleader action to relatively straightforward commercial disputes. Kellogg Hansen attorneys have represented clients in state court and federal district court actions throughout the country, administrative proceedings, all of the federal courts of appeals, and the Supreme Court of the United States.

APPENDIX B

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Antitrust Experience

Kellogg Hansen is among the nation's premiere law firms in the areas of antitrust litigation and enforcement. It is no exaggeration that the firm's cases have reshaped the substantive and procedural law of antitrust over the last two decades. Our precedent-setting appellate victories include *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Pacific Bell Tel. Co. v. Linkline Communications, Inc.*, 555 U.S. 438 (2009); *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228 (2013).

At the trial level, Kellogg Hansen has secured both the largest *and* second largest antitrust verdicts and defended those verdicts on appeal. See *In re Urethane Antitrust Litig.*, 768 F.3d 1245 (10th Cir. 2014) (affirming \$1.2 billion price-fixing verdict); *Conwood Co. v. U.S. Tobacco Co.*, 290 F.3d 768 (6th Cir. 2002) (affirming \$1.05 billion monopolization verdict), *cert. denied*, 537 U.S. 1148 (2003). We have also obtained many large settlements and successfully defended against similarly large antitrust claims.

Reflecting its stature in the field, Kellogg Hansen is currently involved in the two most significant antitrust matters pending in the country today: the firm represents AT&T in the Department of Justice's challenge to the merger of AT&T and Time Warner, *United States v. AT&T Inc.*, No. 17-cv-02511 (D.D.C.), and it is appellate counsel to American Express in the most important vertical-restraint case the Supreme Court has heard in several decades, *Ohio v. American Express Co.*, No. 16-1454.

Top Cases

***In re Urethane Antitrust Litigation*, MDL No. 1616 (D. Kan. 2013)**

In one of the few antitrust class actions to go to trial, Kellogg Hansen attorneys served as co-lead trial counsel for a class of direct purchasers in a four-week jury trial in 2013 alleging price fixing by the Dow Chemical Company. The jury ultimately rendered a \$1.2 billion verdict, the largest antitrust verdict in U.S. history. The verdict was upheld on appeal at the circuit level, and the case settled while under review by the Supreme Court. In its final approval order, the District Court wrote: "[i]n almost 25 years of service on the bench, this Court has not experienced a more remarkable result."

***Conwood Co., L.P. v. U.S. Tobacco Co.*, 290 F.3d 768 (6th Cir. 2002), *cert. denied*, 537 U.S. 1148 (2003)**

Kellogg Hansen attorneys represented Conwood in obtaining and defending the largest antitrust verdict ever affirmed on appeal. The jury found that United States Tobacco (UST) abused its monopoly power and awarded Conwood \$1.05 billion in damages. UST ultimately paid the entire verdict plus interest after appeals were exhausted. The trial team included now-Supreme Court Justice Neil Gorsuch.

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***In re Copper Antitrust Litigation*, MDL 1303 (W.D. Wis. 2000)**

Kellogg Hansen attorneys represented a group of industrial copper purchasers in an antitrust action against J.P. Morgan, in which the purchasers alleged that J.P. Morgan participated in a conspiracy to manipulate the worldwide price of copper, thereby causing hundreds of millions of dollars in damages. Plaintiffs successfully opposed a motion for summary judgment, and the matter settled favorably immediately before trial with the clients recovering approximately forty times more than their share of the class recovery against the other defendants in an earlier phase of the litigation.

***Dial Corp. v. News Corp.*, No. 13-cv-06802 (S.D.N.Y.)**

Kellogg Hansen attorneys successfully represented six corporate class representative clients, including Dial Corporation and other plaintiffs in this Sherman Act monopolization case involving in-store promotions. On the first day of trial, Kellogg Hansen attorneys secured a settlement of \$250 million and significant injunctive relief for both their clients and the certified class of 699 consumer product goods companies. The American Antitrust Institute named Kellogg Hansen a 2017 Antitrust Enforcement Awards honoree for “Outstanding Antitrust Litigation Achievement in Private Law Practice” for their representation in this case.

***In re Steel Antitrust Litigation*, No. 08-cv-5214 (N.D. Ill.)**

Kellogg Hansen attorneys served as court-appointed co-lead class counsel on behalf of a class of direct purchasers that included all the major automakers as well as a number of other Fortune 500 companies in a proposed class action alleging several manufacturers colluded to inflate steel prices. After defeating a motion to dismiss and persuading the court to certify a class, the claims were settled for approximately \$194 million in the aggregate.

***Kleen Products LLC v. International Paper Co.*, 831 F.3d 919 (7th Cir. 2016), cert. denied, 137 S. Ct. 1582 (2017)**

The court of appeals affirmed, on interlocutory appeal, certification of a class of direct purchasers of containerboard products claiming that manufacturers colluded to suppress supply and increase prices. International Paper Co. recently agreed to pay \$354 million to settle the class action. Kellogg Hansen attorneys argued the case and represented purchaser respondents.

***In re Text Messaging Antitrust Litigation*, 782 F.3d 867 (7th Cir. 2015)**

Kellogg Hansen attorneys successfully defended Verizon Wireless against a multi-billion dollar price-fixing suit, winning summary judgment and affirmance on appeal and taking the lead in briefing and argument on behalf of all defendants.

***Anderson News, L.L.C. v. American Media, Inc.*, 680 F.3d 162 (2d Cir. 2012), cert. denied, 568 U.S. 1087 (2013)**

Kellogg Hansen attorneys argued successfully that the district court judgment granting defendants’ motion to dismiss for failure to state a claim under § 1 of the Sherman Act, 15 U.S.C. § 1, be vacated and remanded.

***Coordination Proceedings Special Title (Rule 1550(b)) Microsoft I – V Cases*, J.C.C.P. No. 4106 (Cal. Super. Ct., San Fran.)**

Kellogg Hansen attorneys represented the plaintiffs in Coordination Proceedings Special Title (Rule 1550(b)) Microsoft I – V Cases. Kellogg Hansen attorneys investigated, drafted, and filed the complaint in *Lingo v. Microsoft Corp.*, No. 301357 (Cal. Super. Ct., San Fran.), which became the lead case against Microsoft in California after consolidation, on February 18, 1999. On January 10, 2003, plaintiffs’ counsel and the class representatives reached an agreement with Microsoft on a settlement, which provided \$1.1 billion in monetary benefits to California consumers and municipalities. This settlement is the largest

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recovery of a monopoly overcharge ever achieved in the United States and the largest recovery ever achieved under California's Cartwright Act or California's Unfair Competition Act.

Smokeless Tobacco Consumer Class Actions (2000-2008)

Kellogg Hansen attorneys represented classes of California, Kansas, New York, and Wisconsin consumers of moist smokeless tobacco in antitrust and related actions against U.S. Smokeless Tobacco, in which the consumers alleged, among other things, that U.S. Smokeless Tobacco engaged in anticompetitive behavior that had the effect of unlawfully raising prices paid by consumers, thereby causing hundreds of millions of dollars in damages. After plaintiffs scored numerous victories on class certification, discovery, and other issues, these matters settled on favorable terms collectively for hundreds of millions of dollars in value for consumers.

Volumetrics Medical Imaging, Inc. v. ATL Ultrasound, Inc., No. 01-cv-00182 (M.D.N.C.)

Kellogg Hansen attorneys obtained a jury verdict of \$318.75 million for fraud and unfair trade practices arising out of contract negotiations between plaintiff, a high-technology start-up company, and defendant, a major ultrasound company. This was one of the largest unfair trade practices judgments (\$180 million collected in a settlement).

United States v. AT&T Inc., T-Mobile USA, Inc., and Deutsche Telekom AG, No. 11-01560 (D.D.C.)

Kellogg Hansen attorneys were retained by AT&T Inc. to serve as lead trial counsel in the Department of Justice lawsuit to enjoin the merger of AT&T Inc. and T-Mobile USA, Inc.

Precedent-Setting Cases

American Express Co. v. Italian Colors Restaurant, 570 U.S. 228 (2013)

In a major Supreme Court antitrust arbitration victory, Kellogg Hansen attorneys argued successfully for American Express that the Federal Arbitration Act does not permit courts, invoking the "federal substantive law of arbitrability," to invalidate arbitration agreements on the ground that they do not permit class arbitration of federal antitrust claims.

Pacific Bell Telephone Co. v. Linkline Communications, Inc., 555 U.S. 438 (2009)

Kellogg Hansen attorneys won reversal of a Ninth Circuit "price squeeze" decision, overturning 60-year-old precedent, and persuaded the Supreme Court to adopt a broad ruling that, in the absence of a duty to deal, a wholesale monopolist has no obligation to avoid setting prices that disadvantage downstream rivals.

Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)

Kellogg Hansen attorneys successfully represented AT&T and other telecommunications firms in securing reversal of the Second Circuit ruling and dismissal of antitrust conspiracy claim in the most significant decision on pleading standards in 50 years. This landmark decision established that parallel conduct, absent plausible evidence of agreement, is insufficient to state a claim under § 1 of the Sherman Act.

Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398 (2004)

Kellogg Hansen attorneys successfully represented Verizon in a leading case limiting firms' affirmative obligations to assist competitors under Section 2 of the Sherman Act.

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Ongoing Cases

Ohio v. American Express Co., No. 16-1454 (U.S.)

Kellogg Hansen attorneys currently represent American Express in the Supreme Court's most significant Rule of Reason antitrust case in two decades.

United States v. AT&T Inc., No. 17-cv-02511 (D.D.C.)

Kellogg Hansen currently represents AT&T in the Department of Justice's challenge to the \$108 billion merger of AT&T and Time Warner. Trial in that case began on March 19, 2018, and is being called by commenters the most important antitrust suit of the decade.

In re Dealer Management Systems Antitrust Litigation, MDL No. 2817 (N.D. Ill.)

Kellogg Hansen attorneys represent multiple individual plaintiffs in a major antitrust litigation against the two leading providers of dealer management systems, CDK Global, LLC and The Reynolds & Reynolds Company. Global Competition Review named partners Derek Ho, Michael Nemelka, and Aaron Panner "Litigators of the Week" for successfully obtaining a rare preliminary injunction on behalf of their client, Authenticom, Inc.

Viamedia Inc. v. Comcast Corp., No. 16-cv-05486 (N.D. Ill.)

Kellogg Hansen attorneys, including partners Derek Ho, Aaron Panner, James Webster, and Kenneth Fetterman, represent Viamedia Corporation in an antitrust suit alleging unlawful tying and exclusive dealing in the local cable advertising representation market. The Court has denied Comcast's motion to dismiss and the parties have completed discovery.

IQVIA Inc. and IMS Software Services Ltd. v. Veeva Systems Inc., No. 17-cv-00177 (D.N.J.)

Kellogg Hansen attorneys represent Veeva Systems Inc. in antitrust claims against IQVIA Inc. and IMS Software Services Ltd. (IQVIA). Veeva is alleging that IQVIA is abusing its monopoly power as the dominant provider of data products for life sciences companies to suppress competition and prevent life sciences companies from using Veeva's competing data and software products.

In re Lithium Ion Batteries Antitrust Litigation, No. 13-md-02420 (N.D. Cal.)

Kellogg Hansen attorneys represent a corporate client and the direct purchaser class.

APPENDIX C

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.



Derek T. Ho

Partner

ph: 202.326.7931

fx: 202.326.7999

dho@kellogghansen.com

Mr. Ho specializes in appellate and complex commercial litigation, with particular expertise in class actions and MDL proceedings, and antitrust law. He has represented both plaintiffs and defendants as lead counsel in appellate and district courts across the country.

At the U.S. Supreme Court, Mr. Ho secured victories for his clients in two seminal antitrust cases, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228 (2013). Along with his partner, Aaron Panner, he co-authored the merits brief in *Ohio v. American Express Co.*, No. 16-1454. Mr. Ho also represented clients in two of the Court's most significant recent class action decisions, and prevailed in both. *See Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455 (2013); *Tyson Foods v. Bouphakeo*, 136 S. Ct. 1036 (2016).

Mr. Ho has served as lead counsel in numerous appeals in federal and state courts, including serving as appellate counsel hired by Plaintiffs' Steering Committees to represent thousands of plaintiffs in several large MDLs. *See Juanita Hempstead v. Pfizer, Inc.*, No. 17-1140 (4th Cir.); *Chapman v. Procter & Gamble Distributing LLC*, 766 F.3d 1296 (11th Cir. 2014); *In Re: Zolofit*, No. 16-2247 (3d Cir. 2017) (co-counsel with David Frederick).

In the district courts, Mr. Ho represents several individual plaintiffs in an MDL involving antitrust claims against the dominant providers of automotive data management services, and an independent local cable advertising representative in an antitrust suit against Comcast Corporation, among many other cases. Mr. Ho has also successfully represented defendants in criminal antitrust investigations by the Department of Justice, and regularly provides antitrust counseling to prominent U.S. companies.

Mr. Ho is a frequent speaker at conferences on class actions, the U.S. Supreme Court, and appellate advocacy. He serves as a member of the Kellogg Hansen Executive Committee.

Education

Harvard Law School, J.D., *magna cum laude*, 2001

- Treasurer, *Harvard Law Review*, 2000-2001
- Finalist, Ames Moot Court competition

Yale University, M.A., 1998

Harvard College, B.A., *magna cum laude*, 1996

- Phi Beta Kappa

Clerkship

Law Clerk, Justice David H. Souter,
U.S. Supreme Court, 2002-2003

Law Clerk, Judge Michael Boudin,
U.S. Court of Appeals, First Circuit, 2001-2002

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Aaron M. Panner

Partner

ph: 202.326.7921

fx: 202.326.7999

apanner@kellogghansen.com

Aaron Panner specializes in antitrust law, and U.S. Supreme Court and appellate litigation. He has represented leading companies and individuals in high-stakes litigation at both the trial and the appellate levels, including arguing five cases before the U.S. Supreme Court. His clients include many of the nation's leading communications and information services companies. Mr. Panner represents plaintiffs and defendants, and he has both successfully briefed multiple motions to dismiss antitrust claims on the pleadings, and successfully represented plaintiffs in defeating motions to dismiss.

Mr. Panner recently represented a class of direct purchasers of containerboard products claiming that manufacturers colluded to suppress supply and increase prices. The court of appeals affirmed, on interlocutory appeal, certification of the class. Defendant, International Paper Co., recently agreed to pay \$354 million to settle the class action. *Kleen Products LLC v. International Paper Co.*, 831 F.3d 919 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 1582 (2017)

On behalf of AT&T, Mr. Panner secured a Supreme Court decision eliminating most "price-squeeze" claims under Section 2 of the Sherman Act, winning reversal of the Ninth Circuit. *Pacific Bell Tel. Co. v. Linkline Communications, Inc.*, 555 U.S. 438 (2009). He was the principal drafter of the cert. petition and merits brief in a landmark decision clarifying pleading standards, winning reversal of the Second Circuit. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). He also represented Verizon in a leading case limiting firms' affirmative obligations to assist competitors under Section 2 of the Sherman Act. *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004).

Mr. Panner has published numerous articles on antitrust litigation including: *Bundled Discounts and the Antitrust Modernization Commission*, Antitrust Chronicle (2007); *Are Price Squeezes Anticompetitive*, Antitrust Chronicle (2009); and *The Second Circuit's Starr Decision: Why Twombly Demands More*, Antitrust Chronicle (2010). He is on the Editorial Advisory Board of the Competition Policy International's Antitrust Chronicle.

Education

Harvard Law School, J.D., *magna cum laude*, 1995

- Fay Diploma
- Primary Editor, *Harvard Law Review*, 1994-1995

Yale University, B.S., *summa cum laude*, 1986

- Phi Beta Kappa

Clerkship

Law Clerk, Justice Stephen Breyer,
U.S. Supreme Court, 1996-1997

Law Clerk, Judge Michael Boudin,
U.S. Court of Appeals, First Circuit, 1995-1996

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Michael N. Nemelka

Partner

ph: 202.326.7932

fx: 202.326.7999

mnelka@kellogghansen.com

Michael Nemelka specializes in complex commercial litigation, and has experience across a broad range of civil and criminal matters. He has tried numerous cases to verdict in federal and state courts, as well as before arbitration panels. He has represented corporate and individual clients in cases involving antitrust liability, trust administration, breach of contract, professional liability, intellectual property, and government securities and FCPA investigations.

In one of the few antitrust class actions to go to trial, Mr. Nemelka was part of a trial team that represented a class of direct purchasers in a four-week jury trial alleging price fixing by the Dow Chemical Company among others. The jury rendered a \$1.2 billion dollar verdict after trebling on February 20, 2013. Prior to the trial, all of the other defendants settled with the class. *In re Urethane Antitrust Litig.*, MDL No. 1616 (D. Kan. 2013).

Mr. Nemelka has spearheaded the investigation of the core claims in the antitrust litigation against the two leading providers of dealer management systems, CDK Global, LLC and The Reynolds & Reynolds Company. *In re Dealer Mgmt. Sys. Antitrust Litig.*, MDL No. 2817 (N.D. Ill.). Mr. Nemelka successfully served as lead trial counsel for Authenticom, Inc. at the preliminary injunction hearing in the Western District of Wisconsin. *Global Competition Review* named Mr. Nemelka, along with his partners Derek Ho and Aaron Panner, "[Litigators of the Week](#)" for obtaining this rare preliminary injunction.

In addition to his trial work, Mr. Nemelka has drafted merits and amicus briefs in the U.S. Supreme Court and state supreme courts.

Mr. Nemelka joined Kellogg Hansen in 2007 after clerking for the Honorable Paul V. Niemeyer of the United States Court of Appeals for the Fourth Circuit. He earned his J.D. from the University of Virginia, where he was on the managing board of the *Virginia Law Review*, and a B.A. in history from Brigham Young University.

Education

University of Virginia School of Law, J.D., 2006

- Order of the Coif
- Notes Development Editor, *Virginia Law Review*, 2005-2006

Brigham Young University, B.A., 2003

Clerkship

Law Clerk, Judge Paul V. Niemeyer,

U.S. Court of Appeals, Fourth Circuit, 2006-2007